IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 24.03.2007

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

Second Appeal Nos.477 & 496 of 1995

and

C.M.P.Nos.8415 & 8416 of 2006

Rajagopalan ... Appellant in both S.A.Nos.477 & 496 of 1995/
[Plaintiff in both the OS].

Vs.

1. Pattappan @ Pattudurai
2. Nallusamy @ Nallusevai
... Respondents in both S.A.Nos.477 & 496 of 1995
[Defendants in both the OS].

PRAYER IN S.A.No.496 of 1995: Second Appeal against the Judgment and decree of the learned Principal District Judge, Salem dated 13.07.1994 made in A.S.No.271 of 1993, confirming the judgement and decree dated 20.09.1993 made in O.S.No.201 of 1990 on the file of the Principal District Munsif, Salem.

PRAYER IN S.A.No.477 of 1995: Second Appeal against the Judgment and decree dated 13.07.1994 made in A.S.No.3 of 1994 on the file of the Principal District Judge, Salem confirming the judgement and decree dated 20.09.1993 made in O.S.No.195 of 1990 on the file of the Principal District Munsif, Salem.

For Appellant : Mr.T.Murugamanickam
For Respondents : Mr.D.Sivakumaran

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J U D G M E N T

The unsuccessful plaintiff in both the courts below in O.S.No.195 of 1990 has filed Second Appeal in S.A.No.477 of 1995. Likewise the same party who was the defendants in O.S.No.201 of 1990 having suffered a decree of declaration and injunction has filed Second Appeal No.496 of 1995. The suit filed by the appellant in O.S.No.195 of 1990 is one for injunction, while O.S.No.195 of 1990 is relating to the suit for permanent injunction to 1.01 acres of land comprised in Survey No.46/1A and 6 cents

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of land comprised in Survey No.46/1B in Valapadi Village, the suit property in O.S.No.201 of 1990 filed by the respondent for declaration of title is in respect of 2½ cents of land comprised in Survey No.46/1B in Valapadi Village.

2. The case of the plaintiff in O.S.No.195 of 1990 was that he has purchased the suit property as stated above from one Marimuthu, S/o Vaiyapuri under a sale deed dated 22.02.1988 marked as Ex.B.1. According to the plaintiff, the defendants having failed in their efforts to fight with the plaintiff have used the passage situated in Survey No.46/1B as a cartrack and they have also attempted to interfere with the agricultural operations by the plaintiff in the suit property on 22.12.1989. However, the case of the defendants in the said suit, who are the respondents herein are that while it is true that the plaintiff has purchased under the sale deed dated 22.02.1988 from one Marimuthu, the said sale is not valid. The defense was on the basis that the said Marimuthu himself has no right in the property comprised in Survey No.46/1B. It is their case that they have been using the carttrack situated in Survey No.46/1B exclusively and they have also obtained patta and are in exclusive enjoyment. It is also the case of the defendants in the said suit who are the plaintiff in O.S.No.201 of 1990 filed by them for declaration in respect of 2½ cents situated in Survey No.46/1B Valapadi Village as stated above that the first plaintiff in the said O.S.No.201 of 1990 is the son of the second plaintiff. The second plaintiff under a sale deed executed by one Ayyammal and Arumugam dated 02.02.1955 marked as Ex.A.2 has purchased the said suit property and it is their case that the defendant in the said suit who is the plaintiff in O.S.No.195 of 1990 after purchasing the properties on the Northern side of the plaintiff's property under the sale deed dated 22.02.1988 from one Marimuthu, S/o Vaiyapuri under Ex.B.1 has attempted to interfere with the use of the exclusive carttrack situated in Survey No.46/1B for the purpose of reaching their property situated in Survey No.46/2A which has resulted in filing of the said suit for declaration. Therefore, it is clear that the actual dispute is relating to the title and possession in respect of Survey No.46/1B at Valapadi Village.

3. Both the courts below have found that while Ayyammal and Arumugam have sold the suit property in O.S.No.201 of 1990 to the plaintiffs, who are the respondents in the appeal under a sale deed dated 02.02.1955 marked as Ex.A.2, the same Arumugam has sold the same property along with his minor son under a sale deed dated 22.05.1957 marked as Ex.A.7 to one Vaiyapuri, who is the father of the vendor of the plaintiff in O.S.No.195 of 1990, who is the appellant in these appeals and therefore, the plaintiff in O.S.No.195 of 1990 relied upon Ex.B.1 document dated 22.02.1988 from Marimuth, S/o Vaiyapuri cannot sustain his claim and it was on that basis the suit was filed by the appellant in O.S.No.195 of 1990. It is as against the concurrent findings by both the courts below the present second appeals are filed. While admitting the Second appeals

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this Court has framed the following substantial questions of law:

Question of law in S.A.No.477 of 1995

"a) When the 1st respondent has attested the mortgage deed in which the suit property formed the subject matter, will he not be estopped from later claiming title to the suit property?

b) Whether the judgements of the courts below are vitiated in that, they have upheld the sale in favour of the appellant under Ex.A.2, when it is per se evident, that, the subject matter of sale does not form part of the suit property?

Question of law in S.A.No.496 of 1995

1) When the 1st respondent has attested the mortgage deed in which the suit property formed the subject matter, will he not be estopped from claiming title to the suit property?

2) Whether the judgements of the courts below are vitiated in that they have upheld the sale in favour of the appellant under Ex.A.2 when it is per se evident, that, the subject matter of sale does not form part of the suit property?

3) Whether the lower appellate court was correct in rejecting Ex.B.11 on the ground it was an unregistered document, when it could have been looked into for corollary purpose of seeking the 1st appellant's attestation?"

4. The main point urged on behalf of the appellant in these appeals is that the plaintiffs in O.S.No.201 of 1990 and their claim rested on Ex.A.2 dated 02.02.1955 cannot be sustained. While the plaintiffs under Ex.A.2 in respect of the suit property in O.S.No.201 of 1990 traces the title of Ayyammal based on document and Arumugam based on adverse possession, it was only under Ex.A.3 release deed dated 18.03.1995 ,the stepbrothers of Arumugam, namely, Perumal and Sadayan have released their right in the Southern half of the Survey No.46/1 and therefore, on the date, namely, on 02.02.1955 when Ex.A.2 sale deed was executed in favour of the second plaintiff in O.S.No.201 of 1990, the said Arumugam had no title over the property at all.

5. It is the further case of the appellant herein that after the release deed was obtained from his stepbrothers, the said Arumugam along with his minor son has sold 54 cents which is the Southern half of Survey No.46/1 to Vaiyapuri under a sale deed dated 22.05.1957 marked as Ex.A.7. It was thereafter, Vaiyapuri and his son have partitioned among themselves on 21.01.1980 under Ex.B.14 partition deed under which the Southern half of Survey No.46/1 was allotted to Vaiyapuri's son Marimuthu and the said Marimuthu who has sold to the plaintiff in O.S.No.195 of 1990 under the sale deed dated 22.02.1988 marked as Ex.B.1 and therefore, it is the who claim under the sale deed of Arumugam dated 02.02.1955 cannot sustain their claim of ownership since Arumugam on that date was not having any right over the property.

6. The further contention raised on behalf of the appellant is that while the Appellate Court has found that on the date of execution of

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Ex.A.2 dated 02.02.1955 Arumugam had no right to sell the property but proceeds on the basis that on the date Ex.A.7 dated 22.05.1957 he had right.

7. On the other hand, it is the contention of the respondents in the appeal that while it is true that on the date of execution of the sale deed under Ex.A.2 dated 02.02.1955 Arumugam was not having any right or title over the property, by virtue of the subsequent release deed dated 18.03.1955 given within a short period marked as Ex.A.3, the said Arumugam's right over the property stands confirmed and therefore, the sale deed executed by Arumugam along with Aiyammal under Ex.A.2 dated 02.02.1955 is to be treated as valid from the said date of execution. It is also the case of the respondents that when that is the position, at least after the execution of release deed on 18.03.1955 marked as Ex.A.3, the said Arumugam regained his right of executing Ex.A.7 by way of sale deed to Vaiyapuri. Therefore, according to the learned counsel for the respondents, the defect if any under Ex.A.2 was cured by the subsequent document Ex.A.3.

8. It is also the contention of the learned counsel for the respondents that the claim of the respondents, who is the plaintiff in O.S.No.201 of 1990 is restricted only in respect of 2½ cents which is the subject matter of sale deed under Ex.A.2. He would also submit that evidence of P.W.3 who is the vendor of the sale deed dated 09.10.1953 marked as Ex.A.1 which is the adjacent property on the Northern side apart from son of Ayyammal who is the co-executant of Ex.A.2 also would prove the title and possession of the respondents who are the plaintiff in O.S.No.201 of 1990.

9. A reference to the judgements of the courts below show that the Trial Court as well as the First Appellate Court on appreciation of evidence of P.W.2 and P.W.3 and also on the construction of Ex.A.1 and Ex.A.2 have come to the conclusion that the 2½ cents which is the subject matter of Ex.A.2 sale deed has been used as passage exclusively by the plaintiff in O.S.No.201 of 1990 who are the respondents herein. The courts below have also found that the claim of the plaintiff in O.S.No.195 of 1990 that his right has been admitted by the defendants relying upon Ex.B.11 muchalika executed by Marimuthu in favour of the appellant in which the first defendant in O.S.No.195 of 1990 stood as a witness, was not even the pleading and having found that the 2½ cents have been purchased by the second defendant in O.S.No.195 of 1990, who was the second plaintiff in O.S.No.201 of 1990 and it is not proved that he has not stood as witness in any such document, has come to a clear conclusion in favour of the respondents herein.

10. In fact even assuming that such a muchalika was executed by Marimuthu in favour of the appellant herein in which the first respondent has singed a witness, it does not in any way affect the right of the second respondent, who is the second plaintiff in O.S.No.201 of 1990

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having obtained a sale deed in his favour on 02.02.1955. In fact the First Appellate Court has also given a finding about the additional document marked as Ex.B.15 stating that the said document relates to the Northern side of 54 cents whereas the disputed property measuring 2½ cents is admittedly forming part of the Southern side of 54 cents of lands. The First Appellate Court has also considered the document relied upon by the appellant, namely, Ex.A.11 muchalika stating that inasmuch as such document requires registration and the same remains unregistered, no evidentiary value can be attached to the same.

11. It is seen that on factual position and on the basis of the documents the courts below have come to the correct conclusion. In these circumstances there is absolutely no question of estoppel against the second respondent in whose name the property was purchased under Ex.A.2 even assuming that the first respondent has signed as witness under Ex.B.11 muchalika (mortgage deed). That apart as correctly found by the courts below the said document cannot be given any evidentiary value, since it remains an unregistered document.

12. The one other question of law that the suit property as well as the property comprised in Ex.A.2 are not one and the same is also not correct on the factual situation. In view of the above said fact, there is absolutely no question of law involved in this case much less substantial question of law and therefore, the judgements and decrees of the courts below are confirmed and the Second Appeals stand dismissed. No costs. Consequently, the connected C.M.Ps. are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To
1. The Principal District Judge, Salem.
2. The Principal District Munsif, Salem.
3. The Record Keeper, VR Section, High Court, Madras.
+ 1 CC To Mr. D.Shivakumaran, Advocate SR NO.18783
+ 2 CCs to Mr.T.Murugamanikkam, Advocate SR NO 18746

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